

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2003-319-C - ORDER NO. 2004-66
FEBRUARY 17, 2004

IN RE: Application of ACN Communications Services, Inc. for a Certificate of Public Convenience and Necessity to Provide Resold and Facilities-Based Local Exchange Services and for Flexible Regulation of its Local Exchange Services.) ORDER GRANTING) MOTION FOR ✓RNG) EXPEDITED REVIEW) AND APPLICATION FOR) AUTHORITY TO) PROVIDE LOCAL) EXCHANGE SERVICES
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This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Application of ACN Communication Services, Inc. ("ACN" or the "Company") requesting the authority to provide local exchange service in South Carolina. ACN is already authorized to provide intrastate interexchange telecommunications services within the State of South Carolina as authorized by this Commission in Docket No. 2000-0042-C. Since 2000, the Company has provided interexchange services in South Carolina. By this Application, the Company seeks authority to offer local exchange services to South Carolina customers on a resold and facilities-based basis.

Further, ACN requests that the Commission regulate its local telecommunications services in accordance with the principles and procedures established for flexible regulation in Order No. 98-165 in Docket No. 97-467-C.

The Application of ACN was filed pursuant to S.C. Code Ann. Section 58-9-280 and the Rules and Regulations of the Commission.

The Commission's Executive Director instructed ACN to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the affected areas. The Company complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. A Petition to Intervene was received from the South Carolina Telephone Coalition ("SCTC") on December 8, 2003.

On December 17, 2003, counsel for the SCTC filed with the Commission an executed Stipulation in which ACN stipulated that it would seek authority only in non-rural local exchange ("LEC") service areas of South Carolina and not provide any local service to any customer located in a rural incumbent's service area, unless and until ACN provided written notice of its intent prior to the date of the intended service. ACN also stipulated that it was not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas. ACN agreed to abide by all State and Federal laws and to participate to the extent that ACN may be required to do so by the Commission to support universally available telephone service at affordable rates. The SCTC withdrew its opposition to the granting of statewide Certificate of Public Convenience and Necessity to ACN provided the conditions contained in the Stipulation are met.

On December 18, 2003, ACN filed a Motion for Expedited Review. Along with the Motion, ACN provided the Commission with the Verified Testimony of Mr. John Tasson, ACN's Senior Director of Local Service Development, and documentation

evidencing that the Company possesses the financial, operational, and managerial resources required to provide high quality local exchange telecommunications services at competitive rates, terms and conditions.

FINDINGS OF FACT

1. ACN is organized as a corporation under the laws of the State of Michigan and is authorized to do business as a foreign corporation in the State of South Carolina by the Secretary of State. The Company's corporate headquarters are located in Farmington Hills, Michigan.

2. ACN was authorized to operate as a provider of intrastate interexchange telecommunications services by this Commission in Docket No. 2000-0042-C and now wishes to expand its services to include resold and facilities-based local exchange services.

3. The Commission finds that ACN possesses the necessary experience, capability, and financial resources to provide local exchange telecommunications in South Carolina. S.C. Code Ann. Section 58-9-280(B)(1).

4. The Commission finds that ACN will support universally available telephone service at affordable rates. S.C. Code Ann. Section 58-9-280(B)(4).

5. The Commission further finds that ACN will provide communications services that will meet the service standards of the Commission. S.C. Code Ann. Section 58-9-280(B)(2).

6. The Commission finds that ACN's local telecommunications services should be regulated in accordance with the flexible regulations established for NewSouth Communications by Order No. 98-165 in Docket No. 97-467-C.

7. The Commission finds that the provision of local exchange service by ACN "does not otherwise adversely impact the public interest." S.C. Code Ann. Section 58-9-280(B)(5).

8. Following ACN's execution of a Stipulation with the SCTC, the SCTC withdrew its opposition to the Application. No further protests or Motions for Intervention were filed in this matter. By ACN's Motion for Expedited Review, the Applicant has waived its right to be heard under S. C. Code Ann. Sec. 58-9-280.

CONCLUSIONS OF LAW

1. The Commission concludes that ACN possesses the managerial, technical, and financial resources to provide the competitive local exchange telecommunications services as described in its Application.

2. The Commission concludes that ACN's "provision of service will not adversely impact the availability of affordable local exchange service."

3. The Commission concludes that ACN will participate in the support of universally available telephone service at affordable rates to the extent that ACN may be required to do so by the Commission.

4. The Commission concludes that ACN will provide services that will meet the service standards of the Commission.

5. The Commission concludes that the provision of local exchange service by ACN will not otherwise adversely impact the public interest.

6. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to ACN to provide competitive intrastate local exchange services only to customers located in the non-rural areas of the state. The terms of the Stipulation between ACN and SCTC are approved, and adopted as a part of this Order. Therefore, any proposal to provide local telecommunications service to rural service areas is subject to the terms of the Stipulation.

7. The Commission concludes ACN's local telecommunications services shall be regulated in accordance with the principles and procedures established for flexible regulation first granted to NewSouth Communications by Order No. 98-165 in Docket No. 97-467-C. Specifically, the Commission adopts for ACN's competitive local exchange services a rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels that will have been previously approved by the Commission. Further, ACN's local exchange service tariff filings are presumed valid upon filing, subject to the Commission's right within thirty (30) days to institute an investigation of the tariff filing, in which case the tariff filing would be suspended pending further Order of the Commission. Further, any such tariff filings will be subject to the same monitoring process as similarly situated competitive local exchange carriers.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. ACN's Motion for Expedited Review is granted on the basis of the facts as stated in this Order and on the basis that ACN has previously been found fit to provide telecommunications services in South Carolina (See Order No. 2000-0502), and the instant Application seeks merely to expand that authority to include local exchange services.

2. A Certificate of Public Convenience and Necessity is granted to ACN to provide competitive local exchange telecommunications services via resale or on a facilities-based basis.

3. The terms of the Stipulation between ACN and the SCTC are approved and adopted as a part of this Order. The Stipulation is attached as Order Exhibit 1. Any proposal to provide competitive local exchange telecommunications services to rural service areas is subject to the terms of this Stipulation.

4. ACN shall file, prior to offering local exchange services in South Carolina, its final local service tariff with the Commission.

5. ACN shall be required to comply with Title 23, Chapter 47, South Carolina Code of Laws Ann. which governs the establishment and implementation of a "Public Safety Communications Center," which is more commonly known as a "911 system" or "911 service." Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, the Commission hereby instructs ACN to contact the appropriate authorities regarding 911 service in the

counties and cities where ACN will be operating. Contact with the appropriate 911 service authorities is to be made before beginning telephone service in South Carolina. Accompanying this Order is an information packet from the South Carolina Chapter of the National Emergency Number Association ("SC NENA") with contact information and sample forms. ACN may also obtain information by contacting the E911 Coordinator at the Office of Information Resources of the South Carolina Budget and Control Board. By this Order and prior to providing services within South Carolina, ACN shall contact the 911 Coordinator in each county, as well as the 911 Coordinator in each city where the city has its own 911 system, and shall provide information regarding the Company's operations as required by the 911 system.

6. The FCC in July of 2000 required all telecommunications carriers throughout the United States to implement three-digit, 711, dialing for access to all Telecommunications Relay Services (TRS). The Commission issued a memorandum in March of 2001 instructing all South Carolina telecommunications carriers to implement the service completely by October of 2001. All competitive local exchange carriers (CLECs) and incumbent local exchange carriers (ILECs) were instructed to include language in their tariffs introducing 711 as a new service offering with deployment by July 1, 2001, and to translate 711 dialed calls to 1-800-735-2905. All Payphone Service Providers (PSPs) were instructed to modify their programmable phones to translate calls dialed as 711 to the assigned TRS toll free number 1-800-735-2905 in order to route 711 calls to the TRS provider before October 2, 2001. Additionally, telephone directories were required to be updated and bill inserts promoting 711 were also required. ACN must

comply with the applicable mandates. Complete information on compliance with this FCC and Commission requirement may be found on the Commission's website at <http://www.psc.state.sc.us/reference/forms.asp>.

7. ACN is required to file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipts report will necessitate the filing of intrastate information. Therefore, ACN shall keep financial records on an intrastate basis for South Carolina in order to comply with the Commission's requirements for filing an annual report and a gross receipts report.

The form ACN shall use to file its annual financial information with the Commission can be found on the Commission's website at <http://www.psc.state.sc.us/reference/forms.asp>. The form is entitled "Annual Report for Competitive Local Exchange Carriers", and shall be filed with the Commission by April 1st of each year.

Commission gross receipts forms are due to be filed with the Commission no later than August 31st of each year. The appropriate form for remitting information for gross receipts is entitled "Gross Receipts Form for Utility Companies" and may also be found on the Commission's website at <http://www.psc.state.sc.us/reference/forms.asp>.

8. Additionally, ACN shall file with the Commission a quarterly report entitled "CLEC Service Quality Quarterly Report." The proper form for this report is found on the Commission's website at <http://www.psc.state.sc.us/reference/forms.asp>.

9. ACN shall conduct its business in compliance with Commission decisions and Orders, both past and future, including but not limited to, any and all Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition.

10. ACN's local telecommunications services will be regulated in accordance with the principles and procedures established for NewSouth Communications by Order No. 98-165 in Docket No. 97-467-C. Specifically, the Commission adopts for ACN's competitive local exchange services a rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels that will have been previously approved by the Commission. Further, ACN's local exchange service tariff filings are presumed valid upon filing, subject to the Commission's right within thirty (30) days to institute an investigation of the tariff filing, in which case the tariff filing would be suspended pending further Order of the Commission. Further, any such tariff filings will be subject to the same monitoring process as similarly situated competitive local exchange carriers.

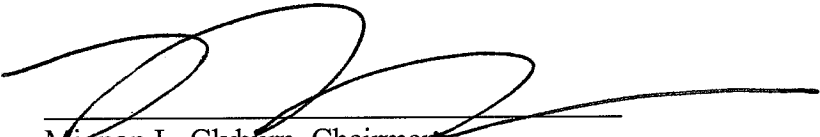
11. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

ATTEST:



Bruce F. Duke, Executive Director
(SEAL)



Mignon L. Clyburn, Chairman

BEFORE

THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

Docket No. 2003-319-C

Re: Application of ACN Communication)
Services, Inc. to Amend Its Certificate)
of Public Convenience and Necessity to)
Provide Resold and Facilities-based)
Local Exchange Telecommunications)
Services in the State of South Carolina)

STIPULATION
PUBLIC SERVICE COMMISSION
SOUTH CAROLINA
FEB 17 2004

The South Carolina Telephone Coalition ("SCTC") (see attachment "A" for list of companies) and ACN Communication ("ACN Communication Services, Inc.") hereby enter into the following stipulations. As a consequence of these stipulations and conditions, SCTC does not oppose ACN Communication Services, Inc.'s Application. SCTC and ACN Communication Services, Inc. stipulate and agree as follows:

1. SCTC does not oppose the granting of a statewide Certificate of Public Convenience and Necessity to ACN Communication Services, Inc., provided the South Carolina Public Service Commission ("Commission") makes the necessary findings to justify granting of such a certificate, and provided the conditions contained within this stipulation are met.

2. ACN Communication Services, Inc. stipulates and agrees that any Certificate which may be granted will authorize ACN Communication Services, Inc. to provide service only to customers located in non-rural local exchange company ("LEC") service areas of South Carolina, except as provided herein.

3. ACN Communication Services, Inc. stipulates that it is not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas.

4. ACN Communication Services, Inc. stipulates and agrees that it will not provide any local service, by its own facilities or otherwise, to any customer located in a rural incumbent LEC's service area, unless and until ACN Communication Services, Inc. provides such rural incumbent LEC and the Commission with written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. Also, ACN Communication Services, Inc. acknowledges that the Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while the Commission conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon showing of good cause.

5. ACN Communication Services, Inc. stipulates and agrees that, if ACN Communication Services, Inc. gives notice that it intends to serve a customer located in a rural incumbent LEC's service area, and either (a) the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law within such 30-day period, or (b) the Commission institutes a proceeding of its own, then ACN Communication Services, Inc. will not provide service to any customer located within the service area in question without prior and further Commission approval.

6. ACN Communication Services, Inc. acknowledges that any right which it may have or acquire to serve a rural telephone company service area in South Carolina is subject to the conditions contained herein, and to any future policies, procedures, and guidelines relevant to such proposed service which the Commission may implement, so long as such policies, procedures, and guidelines do not conflict with Federal or State law.

7. The parties stipulate and agree that all rights under Federal and State law are reserved to the rural incumbent LECs and ACN Communication Services, Inc., and this Stipulation in no

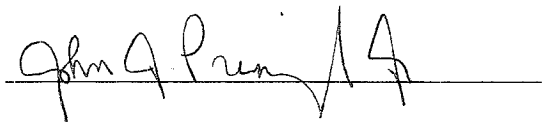
way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications to which they may be entitled.

8. ACN Communication Services, Inc. agrees to abide by all State and Federal laws and to participate, to the extent it may be required to do so by the Commission, in the support of universally available telephone service at affordable rates.

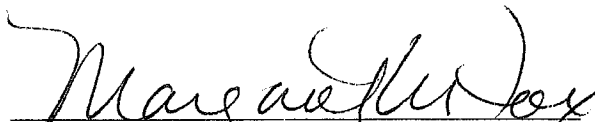
9. ACN Communication Services, Inc. hereby amends its application and its prefiled testimony in this docket to the extent necessary to conform with this Stipulation.

AGREED AND STIPULATED to this 17th day of December,
2003.

ACN Communication:



South Carolina Telephone Coalition:



M. John Bowen, Jr.
Margaret M. Fox
McNAIR LAW FIRM, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

Attorneys for the South Carolina Telephone
Coalition

ATTACHMENT A

South Carolina Telephone Coalition Member Companies for Purposes of Local Service Stipulation

ALLTEL South Carolina, Inc.
Chesnee Telephone Company
Chester Telephone Company
Farmers Telephone Cooperative, Inc.
Ft. Mill Telephone Company
Home Telephone Company, Inc.
Lancaster Telephone Company
Lockhart Telephone Company
McClellanville Telephone Company
Norway Telephone Company
Palmetto Rural Telephone Cooperative, Inc.
Piedmont Rural Telephone Cooperative, Inc.
Pond Branch Telephone Company
Ridgeway Telephone Company
Rock Hill Telephone Company
Sandhill Telephone Cooperative, Inc.
St. Stephen Telephone Company
West Carolina Rural Telephone Cooperative, Inc.
Williston Telephone Company